

CHAPTER He-W 500 MEDICAL ASSISTANCE

Readopt with amendment and renumber He-M 1301.01, effective 1-23-16 (Document #11025), as He-W 589.01, cited and to read as follows:

PART He-W 589 MEDICAL ASSISTANCE SERVICES PROVIDED BY EDUCATION AGENCIES

He-W 589.01 Purpose. The purpose of these rules is to describe the services provided by school districts and school administrative units that are reimbursable under NH medicaid for which federal financial participation (FFP) can be claimed and to describe the required qualifications of clinicians, licensed by a board under the office of professional licensure and certification for healthcare professionals, delivering reimbursable services in schools and preschools. Reimbursable services include both the NH medicaid state plan services, and other optional services that are not covered under the NH medicaid state plan, but covered pursuant to 1905(a) of the Social Security Act through the early and periodic screening, diagnostic, and treatment (EPSDT) benefit. Requesting FFP for medicaid services is optional for school districts and school administrative units. These service descriptions are established to allow students to receive medically necessary services within the least restrictive environment. Participation in medicaid is discretionary on the part of school districts and school administrative units. These rules are not intended to impose upon school districts and school administrative units the responsibility to provide any services that they are not otherwise legally responsible to provide under RSA 186-C or other law.

Readopt with amendment and renumber He-M 1301.02 – 1301.09, effective 8-28-19 (Document #12861, Emergency), as He-W 589.02 – 589.09, to read as follows:

He-W 589.02 Definitions.

(a) “Activities of daily living (ADL)” means basic self-care tasks such as personal hygiene, grooming, eating, dressing, transferring, mobility, and toileting.

(b) “Applied behavior analysis (ABA)” means a treatment modality that employs the process of systematically applying interventions based on the principles of learning theory to improve socially significant behaviors, and is covered through the EPSDT benefit pursuant to He-W 546 and in accordance with He-W 589.04(at).

(c) “Augmentative and alternative communication (AAC) aids” means electronic or non-electronic aids, devices, or systems ordered by a licensed speech-language pathologist that assist a student to overcome or ameliorate the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities, such as communication boards or books, speech amplifiers, and electronic devices that produce speech and/or written output.

(d) “Care plan” means a written health care plan, including, but not limited to, an individualized education program or a 504 plan, which is maintained in the student’s file and documents and supports the medical necessity of all claims to NH medicaid for FFP.

(e) “Carry-over tasks” means tasks, therapies, or activities that a rehabilitative assistant performs as instructed by the licensed clinician in support of the care plan’s goals or the clinician’s treatment plan.

(f) “Durable medical equipment (DME)” means a type of item pursuant to He-W 571 that is:

- (1) Non-disposable and able to withstand repeated use;

(2) Primarily used to serve a medical purpose for the treatment of an acute or chronic medically diagnosed health condition, illness, or injury; and

(3) Not useful to an individual in the absence of an acute or chronic medically diagnosed health condition, illness, or injury.

(g) “Early and periodic, screening, diagnosis and treatment (EPSDT) services” means a benefit pursuant to 42 CFR 440.40 and He-W 546, designed to provide preventative health care, diagnostic services, and early detection and treatment of disease or abnormalities to medicaid enrolled individuals under age 21.

(h) “Enrolled school provider” means a NH local education agency (LEA) or school administrative unit (SAU) that has agreed to participate in NH medicaid pursuant to these rules and enrolled with NH medicaid.

(i) “Federal financial participation (FFP)” means the federal share of costs for services.

(j) “Group” means 2 or more persons.

(k) “Individualized education plan (IEP)” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR 300.320 through 300.324, and the applicable NH board of education administrative rules.

(l) “Instrumental activities of daily living” (IADL) means personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management.

(m) “Local education agency (LEA)” means a local school district.

(n) “Medical assistance” means the federally financed medical assistance program established pursuant to Title XIX of the Social Security Act also known as the medicaid program.

(o) “Medically necessary” means reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent the worsening of, conditions that endanger life, cause pain, result in illness or infirmity, threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and no other equally effective course of treatment is available or suitable for the student requesting the medically necessary service.

(p) “Order” means a written authorization for the provision of services issued by an advance practice registered nurse (APRN), physician assistant, physician, or other licensed clinician with ordering privileges.

(q) “Other licensed clinician” means any person licensed under state law and practicing within the scope of his or her licensure as authorized by the appropriate board, commission, or council responsible for licensing and regulating health care professions under the NH office of professional licensure and certification.

(r) “Performing-only provider” means a health care provider that the medicaid program does not allow to independently enroll with medicaid and is affiliated with an enrolled school provider. The term includes healthcare providers such as rehabilitative assistants pursuant to this part, personal care service workers for individuals under the age of 21, and Board Certified Behavior Analysts.

(s) “Personal care services” means medically necessary services related to assistance with ADL or IADL due to a student’s illness, injury, or disability which are furnished to a student who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for people with

developmental disabilities, or institution for mental illness, and are covered through the EPSDT benefit pursuant to He-W 546 and in accordance with He-W 589.04(at).

(t) “Physician” means a person licensed to practice medicine in NH or the state in which he or she practices.

(u) “Private duty nursing” means the provision of skilled nursing services for students who require more individual and continual skilled nursing observation, judgment, assessment, or interventions than are available from a visiting nurse, in contrast to part-time or intermittent care, such as wound care.

(v) “Psychologist” means a person licensed to practice psychotherapy in NH pursuant to RSA 329-B or an equivalent licensing board in the state in which she or he practices.

(w) “Psychotherapist” means a licensed clinical social worker, pastoral psychotherapist, clinical mental health counselor, or marriage and family therapist licensed under RSA 330-A who provides mental health services. This term includes psychiatrists licensed as physicians under RSA 329, advanced practice registered nurse (APRN) licensed under RSA 326-B:18 as psychiatric nurse practitioners, and psychologists, school psychologists, or associate school psychologists licensed by the board of psychology under RSA 329-B. This term also includes “mental health practitioner”.

(x) “Psychotherapy” means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(y) “Rehabilitative assistance services” means non-skilled interventions covered through the EPSDT benefit and ordered by a physician, physicians’ assistant, APRN, or other licensed clinician, as listed in the student’s care plan.

(z) “School administrative unit (SAU)” means a legally organized administrative body responsible for one or more school districts pursuant to RSA 194-C:1.

(aa) “Section 504 plan (504 plan)” means a plan for services for a student in accordance with Section 504 of the Rehabilitation Action of 1973 as amended.

(ab) “Signature” means:

- (1) A person’s name handwritten by that person, excluding any photocopy, stamp, or other facsimile of such name; or
- (2) An electronic signature that complies with RSA 294-E.

(ac) “Student” means a person who is eligible for and receiving medical assistance under medicaid pursuant to He-W 589.03.

(ad) “Under the direction” means that, except as prohibited by state law, the licensed health care clinician, whether or not he or she is physically present at the time that services are provided:

- (1) Assumes professional responsibility for the services provided;
- (2) Assures that the services are medically appropriate and performed safely; and
- (3) Assures compliance with the clinical oversight requirements as required by law or rule adopted by the appropriate board, commission, or council responsible for licensing and regulating health care professions under the NH office of professional licensure and certification.

He-W 589.03 Student Eligibility. To be eligible for medicaid reimbursement for covered services, a student shall:

- (a) Have a care plan;
- (b) Be less than 21 years of age;
- (c) Be a medicaid recipient; and
- (d) Be served by an LEA or SAU that is an enrolled school provider.

He-W 589.04 Covered Services and Provider Qualifications.

(a) All enrolled school providers shall:

- (1) Be enrolled with NH medicaid for the purposes of administration and billing;
- (2) Verify the qualifications, licensure, and certifications, as applicable, of performing-only providers upon hire and at time of any licensure or certification renewal and maintain proof of verification;
- (3) Screen all performing-only providers for medicaid services for exclusions against the Office of Inspector General (OIG) exclusion and sanction database pursuant to section 1866(j)(2) of the Social Security Act, section 1903(i) of the Social Security Act, and 42 CFR 1001.1901. The OIG exclusion and sanction database may be found at <https://exclusions.oig.hhs.gov>;
- (4) Screen all performing-only providers upon hire, prior to executing a contract, and on a monthly basis thereafter as long as the performing-only provider is providing medicaid services for which the school is seeking federal FFP; and
- (5) Ensure all providers have knowledge in the following areas:
 - a. Medicaid recipient rights, and the reporting of abuse and neglect; and
 - b. Record keeping and documentation requirements pursuant to this part, including the penalties associated with improper recordkeeping and documentation.

(b) All covered services shall be:

- (1) Provided through a student's LEA or SAU;
- (2) Medically necessary;
- (3) Included and documented in the student's care plan in accordance with this part;
- (4) Provided in a variety of locations and settings as specified in a student's care plan and may occur outside the hours of the usual school day;
- (5) Provided by qualified clinicians pursuant to this part and who comply with the scope of his or her board licensure for his or her clinical practice including supervision and ordering requirements; and

(6) Prior authorized if required by the NH medicaid state plan, federal or state law, or the rules adopted thereunder.

(c) Covered services may be provided by staff employed or subcontracted by the enrolled school provider and who are:

(1) Either licensed by the applicable clinical healthcare boards to provide the services provided or otherwise under the direction of the appropriate licensed clinician to provide the services as permitted by applicable licensure law; or

(2) Board Certified Behavior Analysts (BCBA) appropriately certified by the national Behavior Analyst Certification Board, and if supervising others, have a supervisory certification issued by the national board and be acting within the scope of that certification.

(d) Covered supplies and equipment described under He-W 589.04 shall:

(1) Be acquired for the use of a specific student;

(2) When purchased, be the property of the student and his or her family; and

(3) When rented or acquired through a used equipment exchange program, be the property of the student and his or her family during the period used.

(e) DME shall be provided by a qualified DME provider, and in accordance with the requirements pursuant to He-W 571.

(f) AAC devices and aids shall be provided by a qualified DME provider, and in accordance with the requirements of He-W 575.

(g) Medical evaluation shall include the following:

(1) Those services rendered by a physician, APRN, or physician assistant whose opinion or advice is requested regarding the evaluation or treatment of a student's condition; and

(2) An initial evaluation shall be covered, however, if the physician, APRN, or physician assistant assumes the continuing care of the student, any service(s) provided subsequent to the initial evaluation by such physician, APRN, or physician assistant shall not be considered an evaluation but might be coverable as another service pursuant to this part.

(h) The following medical evaluation services performed by the providers in (g) above shall be billable under the category of medical evaluation:

(1) Examination of a single organ system, including:

a. Documentation of complaint(s);

b. Physical examination and diagnosis of current illness; and

c. Establishment of a plan of management relating to a specific problem; and

(2) In-depth evaluation with development and documentation of medical data, including:

a. Chief complaint;

- b. Present illness;
 - c. Family history;
 - d. Medical history;
 - e. Personal history;
 - f. System review; and
 - g. Physical examination.
- (i) Nursing services shall be medically necessary to meet the health needs of a student and include:
- (1) Any assessments or treatments performed by a licensed registered nurse, licensed practical nurse (LPN), or APRN for a student that are medically necessary; and
 - (2) Supplies and equipment necessary for the provision of the covered nursing services as determined by the licensed registered nurse, LPN, or APRN.
- (j) Nursing services shall be performed by the following:
- (1) An APRN licensed to practice in NH by the NH board of nursing in accordance with RSA 326-B:18 or the state in which he or she practices as a registered nurse in an advance practice role;
 - (2) A registered nurse who is:
 - a. Licensed to practice in NH or the state in which he or she practices in accordance with RSA 326-B; and
 - b. Acting under the direction of a physician, APRN, or physician assistant for those activities that require an order; or
 - (3) A LPN who is:
 - a. Licensed to practice in NH under RSA 326-B or the state in which he or she practices; and
 - b. Acting under the direction of a physician, APRN, registered nurse, or physician assistant.
- (k) Nursing services shall include the following:
- (1) Administration of medication(s);
 - (2) Positioning or repositioning;
 - (3) Assistance with specialized feeding programs;
 - (4) Management and care of specialized medical equipment such as:
 - a. Colostomy bags;
 - b. Nasogastric tubes;
 - c. Tracheostomy tubes; and

d. Related medical devices;

(5) Observation of students with chronic medical illnesses in order to assure that medical needs are being appropriately identified, addressed, and monitored; and

(6) Other services determined by a registered nurse, LPN, or APRN to be medically necessary and appropriate.

(l) Billable categories of nursing services shall include the following:

(1) Nursing assessment;

(2) Nursing treatment; and

(3) Supplies and equipment necessary to provide covered nursing services.

(m) Private duty nursing services shall be:

(1) Covered services when they are part of the student's medical regimen and rendered under the order and under the direction of the student's physician; and

(2) Covered and delivered in accordance with the requirements of He-W 540.

(n) Occupational therapy services shall be covered if the services are medically necessary to implement a program of activities to develop or maintain adaptive skills necessary to achieve adequate and appropriate physical and mental functioning of a student including:

(1) Any evaluations, treatment, or assessments performed by an occupational therapist of students whose abilities to carry out age appropriate tasks are threatened or impaired by physical illness or injury, mental illness, emotional disorder, or congenital or developmental disability;

(2) Supplies and equipment necessary to provide the covered occupational therapy services as recommended by an occupational therapist; and

(3) Occupational therapy services performed by an occupational therapy assistant carrying out a therapy plan developed by the occupational therapist.

(o) Occupational therapy services shall be provided by:

(1) An occupational therapist who is licensed to practice in NH or the state in which he or she practices, and is either:

a. Registered by the National Board for Certification in Occupational Therapy Inc.; or

b. A graduate of a program in occupational therapy approved by the Committee on Allied Health Education and Accreditation of the American Medical Association and engaged in the supplemental clinical experience required before registration by the National Board for Certification in Occupational Therapy, Inc.; or

(2) An occupational therapy assistant as defined in RSA 326-C:1, IV working under the direction of a licensed occupational therapist.

(p) Occupational therapy services, other than an evaluation, shall require an order.

(q) Occupational therapy services shall include:

(1) Task-oriented activities to correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the student;

(2) Evaluations of:

- a. Sensorimotor abilities;
- b. Self-care activities;
- c. Capacity for independence;
- d. Physical capacity for prevocational and work tasks; and
- e. Play and leisure performance;

(3) Specific occupational therapy techniques involving:

- a. Improving skills for ADLs;
- b. The fabrication and application of splinting devices;
- c. Sensorimotor activities;
- d. The use of specifically designed manual and creative activities;
- e. Guidance in the selection and use of adaptive equipment; and
- f. Specific exercises to enhance functional performance and physical capabilities needed for work activities; and

(4) Other services determined by an occupational therapist to be medically necessary and appropriate.

(r) Billable categories of occupational therapy services shall include the following:

(1) Occupational therapy evaluation;

(2) Occupational therapy, individual;

(3) Occupational therapy, group; and

(4) Supplies and equipment necessary for the provision of covered occupational therapy services.

(s) Physical therapy services shall include:

(1) Any evaluations to determine a student's level of physical functioning, including performance tests to measure strengths, balance, endurance, and range of motion;

(2) Any treatment services, evaluations, or assessments which might utilize therapeutic exercises or the modalities of heat, cold, water, and electricity, for the purpose of preventing, restoring, or alleviating a lost or impaired physical function;

- (3) Other services, including supplies and equipment, determined by a physical therapist to be medically necessary and appropriate for a student's physical therapy; and
 - (4) Physical therapy services performed by a physical therapy assistant carrying out a therapy plan developed by the physical therapist.
- (t) Physical therapy services shall be provided by:
- (1) A physical therapist who is a graduate of a program of physical therapy approved by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Physical Therapy Association or its equivalent and licensed to practice in the state of NH or the state in which he or she practices; or
 - (2) A physical therapy assistant as defined in RSA 328-A:2, VIII who is under the direction of a licensed physical therapist pursuant to (1) above.
- (u) Physical therapy services shall be medically necessary.
- (v) Billable categories of physical therapy services shall include the following:
- (1) Physical therapy, evaluation;
 - (2) Physical therapy, individual;
 - (3) Physical therapy, group; and
 - (4) Supplies and equipment necessary for the provision of covered physical therapy services.
- (w) Psychiatric services shall be medically necessary for the evaluation, assessment, diagnosis, and treatment of mental or emotional conditions.
- (x) Psychiatric services shall be provided by:
- (1) A psychiatrist who is a physician licensed to practice in NH as defined in RSA 135-C:2, XIII, or the state in which he or she practices and either board certified or board eligible according to the most recent regulations of the American Board of Psychiatry and Neurology, Inc. or its successor organization; or
 - (2) An APRN with a psychiatric specialty pursuant to RSA 326-B:18.
- (y) Billable categories of psychiatric services shall include the following:
- (1) Psychiatric evaluation and diagnosis; and
 - (2) Psychiatric treatment.
- (z) Psychological services shall require an order and be medically necessary for the evaluation, diagnosis, treatment, and counseling of mental or emotional illnesses, symptoms, or conditions.
- (aa) Psychological services shall be provided by:
- (1) A psychologist who is a school psychologist or associate school psychologist certified by the state board of education in NH or in the state in which he or she practices and licensed by the NH board of psychologists or another state's board of psychology;

- (2) A psychologist or associate psychologist licensed by the NH board of psychologists or licensed by another state's board of psychology;
 - (3) A physician;
 - (4) APRNs with a psychiatric specialty pursuant to RSA 326-B:18;
 - (5) Psychotherapists acting within the scope of his or her licensure; or
 - (6) A master licensed alcohol and drug counselor (MLADC) for co-occurring mental health and substance use disorders.
- (ab) Billable categories of psychological services shall include the following:
- (1) Psychological testing and evaluation;
 - (2) Psychodiagnostic testing;
 - (3) Psychological counseling, individual treatment;
 - (4) Psychological counseling, group treatment; and
 - (5) Family counseling, during which the student shall be present at 51% of the counseling session.
- (ac) Mental health services, other than psychiatric and psychological services, shall:
- (1) Be covered if they are medically necessary and ordered; and
 - (2) Include, but not be limited to:
 - a. Behavior management;
 - b. Individual counseling;
 - c. Group counseling;
 - d. Family counseling, during which the student shall be present at 51% of the counseling session; and
 - e. Crisis intervention.
- (ad) Persons providing mental health services shall be:
- (1) A psychologist who is a school psychologist or associate school psychologist certified by the state board of education in NH or in the state in which he or she practices and licensed by the NH board of psychologists or another state's board of psychologist;
 - (2) A psychotherapist or mental health practitioner as defined in RSA 330-A:2, VII and VIII, respectively;
 - (3) A psychologist licensed by the board of psychologists pursuant to RSA 329-B; or

(4) An APRN with a psychiatric specialty pursuant to RSA 326-B:18.

(ae) Substance use disorder (SUD) treatment and recovery support services shall be provided by the licensed qualified providers described in He-W 513, and in accordance with the requirements in He-W 513.

(af) Rehabilitative assistance services shall include the following:

(1) Mobility assistance such as positioning, transfers, correct application of ankle-foot orthosis, bracing or orthotic devices, range of motion, fall prevention, safety risk precautions, and physical therapy carry-over tasks as directed by the licensed physical therapist;

(2) Communication assistance such as assistance with sign language, prompting to facilitate expressive and receptive language, assistance with AAC devices and other such devices that ameliorate communication limitations, and speech language carry-over tasks as directed by the licensed speech language pathologist;

(3) Assistance with the implementation of behavioral management plans to increase adaptive behavioral functioning and carry-over tasks as directed by the mental health practitioner or BCBA;

(4) Nutrition such as assistance with eating, cutting food, food preparation, and safe eating plan carry-over tasks as directed by the speech language pathologist or occupational therapist;

(5) Cueing, prompting, and guiding, when provided as part of the assistance with ADLs, communication, or behavior management;

(6) Assistance with adaptive or assistive devices when linked to the student's medical condition;

(7) Assistance with the use of DME when linked to the student's medical condition;

(8) Medication administration to the extent allowable under RSA 326-B and pursuant to Nur 404.07 when the rehabilitative assistant has been trained by a nurse in medication administration, and the nurse has delegated the task of medication administration to the rehabilitative assistant;

(9) Personal care services such assistance with ADL and IADL and assistance with occupational therapy, physical therapy, or speech language carry-over tasks;

(10) Carry-over of therapy skills training as delegated by a speech language pathologist, physical therapist, and occupational therapist;

(11) Observation and reporting of signs of distress in the student's medical condition as trained by a registered nurse;

(12) Implementation of safe eating plans and g-tube feedings as delegated by a registered nurse with applicable training;

(13) Maintaining a safe environment to assure the student's safety concerns are met for the student, other students and staff; and

(14) Any other remedial services, that are included in the student's care plan as medically necessary for the maximum reduction of a student's physical or mental disabilities excluding educational and social activities such as classroom instruction and academic tutoring.

(ag) Rehabilitative assistants shall:

(1) Either:

- a. Be certified pursuant to Ed 504.05 or Ed 504.06, requirements and certification for paraeducators;
- b. Have qualifications determined by the department to be equivalent to the requirements for certification under Ed 504.05 or 504.06; or
- c. Be other licensed clinicians; and

(2) If applicable for the tasks delegated to the rehabilitative assistant or if required by law have knowledge in the following areas:

- a. Personal care and nutrition;
- b. Infection control and universal precautions designed to prevent the transmission of infectious diseases;
- c. Safety and emergency procedures, including basic first aid and 911 protocols; and
- d. Proper lifting techniques.

(ah) Rehabilitative assistants shall provide rehabilitation assistance services in accordance with Ed 1113.12.

(ai) Rehabilitative assistance services shall be medically necessary and require an order.

(aj) Provision of rehabilitative assistance services shall be reviewed by a licensed clinician designated by the enrolled school provider's care plan team every 30 days. Such review shall include review of the activities performed by the rehabilitative assistant and the effectiveness of the activities as observed by the rehabilitative assistant. As part of the review, the care plan team designated licensed clinician shall sign the documentation of the service transaction logs to attest that the service was actually provided and shall provide review and signature that the activities have been conducted in accordance with the care plan

(ak) Speech, language, and hearing services shall be covered services if they are services, supplies, or equipment ordered by a licensed audiologist or licensed speech-language pathologist to be medically necessary for the evaluation, diagnosis, or treatment of speech, language, and hearing disorders which result in communication disabilities.

(al) Speech language services shall include services performed by speech language assistants listed in (am) below carrying out a therapy plan developed by the speech language pathologist.

(am) Speech, language, and hearing services shall be provided by:

- (1) An audiologist who is licensed to practice in NH by the board of hearing care providers or the state in which he or she practices;
- (2) A speech-language pathologist who is either:

a. Licensed pursuant to RSA 326-F to practice in NH, which shall be considered equivalent to having met the requirements for the American Speech-Language-Hearing Association (ASHA) Certificate of Clinical Competence in Speech-Language Pathology; or

b. Licensed in the state in which he or she practices and have one of the following:

(i) A Certificate of Clinical Competence from the American Speech and Hearing Association;

(ii) Completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) Completed the academic program and is acquiring supervised work experience to qualify for the certificate; or

(3) A speech-language assistant as defined in RSA 326-F:1, II-a working under the direction of a licensed speech-language pathologist pursuant to (2) above.

(an) Billable categories of speech, language, and hearing services shall include the following:

(1) Individual speech, language, or hearing evaluation;

(2) Speech, language, or hearing therapy, individual treatment;

(3) Speech, language, or hearing therapy, group treatment; and

(4) Supplies and equipment necessary for the provision of covered speech language and hearing services.

(ao) Vision services shall be medically necessary for the prevention or rehabilitation of visual impairment or restoration of a student with a visual impairment to his or her best possible functional level and be provided by an optometrist, ophthalmologist, or optician.

(ap) EPSDT comprehensive and age-appropriate medical assessments and screenings of a student's physical and mental status, including vision and hearing screenings in accordance with the requirements pursuant to He-W 546.05.

(aq) Services that are not covered or have coverage limits under the NH medicaid state plan shall be covered through the EPSDT benefit when medically necessary, coverable under Section 1905(a) of the Social Security Act, and requested in accordance with the requirements of He-W 546.

(ar) Except as indicated in (at) below, the following shall be examples of services subject to the requirements of He-W 546:

(1) Rehabilitative assistance services;

(2) Applied behavior analysis;

(3) Personal care services for individuals under the age of 21;

(4) Wrap around services;

- (5) Case management services; and
 - (6) Other optional services listed in 1905(a) of the Social Security Act and not included in the NH medicaid state plan or included as a covered service under this part.
- (as) The following services shall not be subject to the prior authorization requirements of He-W 546:
- (1) Rehabilitative assistance services;
 - (2) Applied behavior analysis; and
 - (3) Personal care services for individuals under the age of 21.
- (at) Any services not listed as covered under the NH medicaid state plan or services with coverage limits shall be given independent review by the department for coverage based on medical necessity in accordance with the EPSDT benefit pursuant to He-W 546.
- (au) Specialized transportation shall be a billable service as follows:
- (1) Transportation shall be listed in the student's IEP as a required service and the student shall be physically in the vehicle for the transportation to be billable to medicaid;
 - (2) Transportation shall be considered a required service if:
 - a. The student requires transportation in a vehicle specially adapted to serve the needs of the disabled student, including a specially adapted school bus; or
 - b. The student resides in an area that does not have school bus transportation, such as those areas in close proximity to a school, but has a medical need for transportation that is noted in the IEP;
 - (3) The following transportation may be billed as a medicaid service:
 - a. Transportation to and from school only on a day when the student receives a medicaid coverable service at school during the school day; and
 - b. Transportation to and from a medicaid coverable service in the community during the school day;
 - (4) The medicaid coverable service in (3)a. and (3)b. above shall be listed in the student's IEP as a required service; and
 - (5) In addition to the documentation required by He-W 589.06, transportation providers shall maintain a daily transportation log to include:
 - a. Student's name;
 - b. Date of service;
 - c. Clear indication that the student is being transported either one-way or round-trip;
 - d. The total number of students on the bus, both in the morning and the afternoon;
 - e. The total miles the bus traveled, both in the morning and the afternoon;

- f. Driver's name; and
- g. Driver's signature.

He-W 589.05 Non-Covered Services. The following shall be non-covered services and shall not be eligible for reimbursement:

- (a) Services not listed in a student's care plan;
- (b) Services that are not coverable under the Social Security Act and for which no FFP is available for said service;
- (c) Services performed by unqualified individuals pursuant to the Social Security Act, or services delivered by provider types not approvable under the Social Security Act to provide Medicaid services;
- (d) Consultations, visits, trainings, meetings, or discussions between healthcare providers or individuals in which the student was not physically present for at least 51% of the time;
- (e) Services which are non-covered pursuant to rules in He-W 500 and are not covered under EPSDT;
- (f) Supported employment such as vocational goals and job tasks;
- (g) Services which are solely educational, remedial education, or vocational instruction or tutoring;
- (h) Services performed by educators or individuals who are not healthcare clinicians such as teachers of the visually impaired or deaf unless:
 - (1) The individual has a valid healthcare license issued by the appropriate licensing board, commission, or council and is acting within the scope of his or her license;
 - (2) The individual is a rehabilitative assistant providing rehabilitative assistance services pursuant to He-W 589.04(af)-(aj); or
 - (3) The individual currently holds a certification as a BCBA;
- (i) Leisure and social activities that are non-medical;
- (j) General supervision of a student as required for any student based on the student's development and for non-medical reasons;
- (k) Services that are solely personal care services delivered by a legally responsible family member pursuant to 42 CFR 440.167;
- (l) Performance of tasks for the sole purpose of assistance with completion of educational assignments;
- (m) Services under a CMS NH medicaid waiver;
- (n) Medicaid state plan services only provided under the 1915(i) provisions of the Social Security Act;

- (o) Day care;
- (p) Teaching parenting skills;
- (q) Review of records, documentation development, or report writing;
- (r) Attending meetings, including individualize education program meetings and IEP team meetings;
- (s) Parent consultations, contacts, or trainings;
- (t) School guidance counselor services unless:
 - (1) The individual has a valid healthcare license issued by the appropriate licensing board, commission, or council and is acting within the scope of his or her license;
 - (2) The individual is a rehabilitative assistant providing rehabilitative assistance services pursuant to He-W 589.04(af)-(aj); or
 - (3) The individual currently holds a certification as a BCBA;
- (u) Services by individuals not having a current license for the practice specialty area for the service area being provided; and
- (v) Services requiring the technical or professional skill that a state statute or regulation mandates shall be performed by a health care clinician licensed or certified by the state.

He-W 589.06 Documentation and Payment for Services.

- (a) Reimbursement to enrolled school providers shall be the lesser of the following:
 - (1) One half of the actual cost, or
 - (2) The rate established by the department, in accordance with RSA 161:4, VI(a),
- (b) Enrolled school providers shall bill by unit of service, using the current procedural code for the service delivered, and submit claims for payment that include the actual cost of the service to the department's fiscal agent.
- (c) Enrolled school providers shall submit claims for medicaid covered services consistent with this rule and with federal medicaid law pursuant to 42 CFR 455, 42 CFR 456, 42 CFR 431, and 42 CFR 1001.
- (d) Enrolled school providers shall maintain unique documentation in accordance with He-W 520 and this part for the delivered services in each student's individual record, with such documentation to include:
 - (1) A copy of the care plan and, if an IEP, evidence of implementation of the IEP as required by Ed 1109.04(b);
 - (2) The name of the student, the medical assistance ID number, and documentation demonstrating receipt of each unit of the covered service;
 - (3) The names, qualifications, and credentials of all performing providers for each service delivered for which the school sought FFP;

- (4) The documentation of the qualifications, names, and signatures of persons directing or supervising the individuals providing the covered services if direction or supervision is required under this part or applicable law, and the date of supervisory approval.
 - (5) Date(s) of each service delivered and the location where the services were performed;
 - (6) The type of covered service provided and a description of each service provided;
 - (7) The duration of the provision of the each covered service, number of units performed, and the number of minutes for each delivered service;
 - (8) The start and stop times of the delivered services, and whether there was a break in services or time away by the performing provider;
 - (9) Indication whether the services were delivered in a group setting or individually;
 - (10) Indication of whether the student was actually present for the service and indication whether the student was present for at least 51% of the time;
 - (11) In the case of group services, documentation of the number of participants in the group who received the covered service regardless of the participants' medicaid eligibility;
 - (12) A copy of a physician's or other licensed clinician's order if required; and
 - (13) Documentation of the qualifications and the handwritten signature of the individual(s) attesting to the medical non-academic nature of the covered rehabilitative assistance services.
- (e) Enrolled school providers shall submit claims for physical, occupational, and speech-language therapy services in accordance with the following:
- (1) Only units of direct treatment performed by a physical therapist, occupational therapist, SLP, a physical therapy assistant, occupational therapy assistant, or speech-language assistant shall be billed, meaning the time the therapist or physical therapy assistant, occupational therapy assistant, or speech-language assistant spends providing direct treatment to one student;
 - (2) Therapists working as a team to treat one or more students shall not each bill separately for the same or different service provided at the same time to the same student; and
 - (3) If a student requires co-treatment simultaneously by 2 therapists, the total number of units shall be divided between the therapists and billed separately by each therapist to equal the total time the student was receiving actual therapy services.
- (f) Enrolled school providers shall only bill covered service time provided simultaneously by more than one licensed clinician and a rehabilitative assistant as follows:
- (1) If rehabilitative assistance is provided simultaneously with another covered service, the rehabilitative assistance shall be billed in addition to the covered service; or
 - (2) If rehabilitative assistance is provided by more than one rehabilitative assistant simultaneously, each assistant's service shall be billed separately.
- (g) In calculating the cost for transportation, the enrolled school providers may include the following actual costs related to the trip:

- (1) Fuel;
- (2) Insurance;
- (3) Driver's salary and benefits;
- (4) Salary and benefits of other persons working on the bus;
- (5) Depreciation, and
- (6) Maintenance.

(h) The total cost calculated in (g) above shall then be divided by the total number of miles for the trip both ways, and then divided by the total number of students on the bus, regardless of the students' medicaid eligibility, to determine the cost per mile per student.

(i) In accordance with 34 CFR 300.154 (d)(2)(iv), Ed 1120.08, and 42 CFR 300.154(d)(2)(v), informed parental consent shall be obtained prior to the enrolled school provider billing the student's medicaid.

(j) Enrolled school providers shall maintain records in support of claims submitted for reimbursement for a period of at least 6 years from the date of service or until the resolution of any legal action(s) commenced in the 6-year period, whichever is longer.

(k) As applicable, the creation, storage, retention, disclosure, and destruction of documentation required by this part shall comply with all federal and state privacy and security laws and rules including the substance use disorder patient records regulations pursuant to 42 CFR Part 2, Family Educational Rights and Privacy Act, and the Health Insurance Portability and Accountability Act of 1996.

He-W 589.07 Utilization Review and Control.

(a) The department's program integrity unit shall monitor utilization of medical services delivered in schools to identify, prevent, and correct potential occurrences of fraud, waste, and abuse in accordance with 42 CFR 455, 42 CFR 456, 42 CFR 1001, and He-W 589.

(b) The department shall recoup state and federal medicaid payments as permitted by 42 CFR 455, 42 CFR 447, and 42 CFR 456 for an enrolled school provider's failure to comply with these rules and to maintain supporting records in accordance with He-W 520 and He-W 589.

He-W 589.08 Documentation of Expenditure of Non-Federal Funds.

(a) The enrolled school provider shall provide documentation annually regarding all services rendered pursuant to these rules.

(b) Such documentation shall:

(1) Demonstrate that:

a. The percentage of federal medical assistance reimbursed, as required by section 1905(b) of the Social Security Act, does not exceed 50% of the actual cost of covered services claimed under medicaid; and

b. In no case are services that are reimbursable under medicaid, but paid by other federal funding, claimed by the enrolled school provider under NH medicaid;

- (2) Be reviewed and signed by the enrolled school provider's superintendent;
- (3) Be submitted to the department no later than October 30 of each year for the preceding fiscal year period; and
- (4) Be accompanied by a completed form "Documentation of Expenditure of Non-Federal Funds" (2/2020) for a specific July 1 through June 30 time period which includes an attestation signed and dated by the superintendent stating;

"I hereby certify that all Medicaid funds paid to the above named districts under He-W 589, Medical Assistance Services Provided by Educational Agencies for the period July 1, xxxx through June 30, xxxx have been supplemented with LEA/SAU and/or non-federal funds to total 100% of the cost of services rendered and that the Medicaid reimbursement does not exceed 50% of the total cost of the services rendered."

He-W 589.09 Waivers.

(a) An enrolled school provider may request a waiver of specific procedures outlined in He-W 589 by writing to the department.

(b) A completed waiver request shall be signed by the enrolled school provider's designee and if requesting a waiver for a BCBA include a copy of the individual's board certification and an attestation by the school that an OIG screening was performed.

(c) The waiver shall be requested in writing to the department, detailing which rule provision is to be waived and how the school plans to meet the objective or intent of the rule.

(d) A waiver request shall be submitted to:

Department of Health and Human Services
Office of Medicaid Medical Services
Hugh J. Gallen State Office Park
129 Pleasant Street, Brown Building
Concord, NH 03301

(e) No federally mandated requirement and no provision or procedure prescribed by state statute shall be waived.

(f) The request for a waiver shall be granted by the commissioner or his or her designee within 30 days if the waiver:

- (1) Meets the objective or intent of the rule;
- (2) Does not negatively impact the health or safety of the student(s); and
- (3) Does not affect the quality of services to students.

(g) Upon receipt of approval of a waiver request, the enrolled school provider's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which waiver was sought.

(h) Waivers shall be effective for a maximum of 2 years.

(i) An enrolled school provider may request a renewal of a waiver from the department. Such request shall be made at least 30 days prior to the expiration of a current waiver. A request for renewal of a waiver shall be approved in accordance with the criteria specified in (f) above.

APPENDIX

Rule	Specific State or Federal Statutes the Rule Implements
He-W 589.01	RSA 171-A:6, RSA 135-C:1; RSA 186-C:25 & 29; RSA 167:3-k
He-W 589.02	RSA 171-A:6, RSA 135-C:1, 42 CFR 483.106
He-W 589.03	RSA 171-A:6, RSA 135-C:1, 42 CFR 483.106
He-W 589.04	RSA 186-C:25; 42 CFR 440.230; 42 CFR 456.3; 42 USC 1936d(r)
He-W 589.05	42 CFR 440, Subpart A
He-W 589.06	RSA 186-C:25; 42 CFR 447.15; 42 CFR 447
He-W 589.07	RSA 171-A:6; RSA 135-C:1, 42 CFR 483.132; 42 CFR 455; 42 CFR 456
He-W 589.08	RSA 171-A:6; 135-C:1; 42 CFR 483.132
He-W 589.09	RSA 171-A:6; 135-C:1; 42 CFR 483.132